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November 10, 1993

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Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: PP Docket No. 93-253

Dear Mr. Caton:

Transmitted herewith, on behalf of the National Rural Telecom Association, are an original and nine (9) copies of its comments in the above-referenced proceeding.

In the event of any questions concerning this matter, please communicate with this office.

Very truly yours,

Margot Smiley Humphrey
Margot Smiley Humphrey

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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Implementation of Section 309(j)
of the Communications Act
Competitive Bidding

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PP Docket No. 93-253

COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

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November 10, 1993

TABLE OF CONTENTS

	<u>Page</u>
Summary	i
Introduction	1
The Budget Act Requires the Commission to Provide Realistic Opportunities for Rural Telephone Companies and Other Designated Entities to Become Licensees through Competitive Bidding	2
"Rural Telephone Companies" Are LECs that Serve Rural Study Areas	4
NRTA Supports the Commission's Proposal to Limit Bidding for Two Frequency Bands to Designated Entities . . .	8
The Commission Should Adopt a Delayed Payment and Installment Schedule for Designated Entities in Any PCS Frequency Auction	9
The Commission Should Make Tax Certificates Available for Transactions Increasing Ownership by Designated Entities	11
Competitive Bidding Should Not Be Applied to LEC Microwave Links, BETRS and Rural Radio Frequencies	12
Conclusion	14

Summary

The Budget Act obliges the Commission to adopt auction rules that promote service to rural consumers and provide rural telephone companies and other designated groups with opportunities to bid successfully for radio licenses. It must consider installment methods, tax certificates, bidding preferences and other means to achieve these objectives and report on their implementation.

To fulfill its public interest obligations, the Commission should define rural telephone companies as those whose study areas contain (a) only places not in urbanized areas that have less than 10,000 inhabitants or (b) less than 10,000 access lines. As "specialists" with a proven record of rural service, these LECs are likely to serve rural customers sooner and better with new technologies like PCS. REA borrowers need preferences to participate against huge companies bidding for large PCS service areas, particularly given recent reductions in REA subsidies. Operating companies serving hybrid urban and rural areas do not concentrate on rural service and should not be characterized as rural telephone companies.

Rural telephone companies should be allowed to bid for all frequency blocks, but the proposed 20 MHz and 10 MHz blocks should be reserved for bids by them and the other designated entities. For any frequencies rural companies obtain, they should be able to delay payment for two years and pay the remaining amount in installments. Less rigorous financial

qualifications showings upon application would also facilitate their participation and recognize their demonstrated rural investment record. NRTA does not believe interest should be charged for amounts paid timely under an installment schedule; if it is charged, it should not exceed the government's cost of money. The Commission should also use tax certificates to encourage investment in and sales to designated entities.

The Commission should not apply competitive bidding to microwave links, BETRS or rural radio frequencies. Frequency coordination works well, and these vital components of universal service should not be burdened or possibly made unavailable.

Before the
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Washington, D.C. 20554

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In the Matter of)

Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)

PP Docket No. 93-253

COMMENTS OF THE NATIONAL RURAL TELECOM ASSOCIATION

The National Rural Telecom Association (NRTA), by its attorneys, submits these comments in response to the Commission's October 12, 1993 Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding. The NRPM seeks comments on proposals to implement the competitive bidding provisions of the Omnibus Budget Reconciliation Act of 1993 (Budget Act). NRTA's comments focus on competitive bidding issues of particular importance to rural telephone companies.

NRTA is an association of approximately 300 local exchange carriers (LECs) that borrow under Rural Electrification Administration (REA) and Rural Telephone Bank (RTB) programs. These programs are designed to help finance construction, improvement and expansion of telephone facilities "to assure the availability of adequate telephone service to the widest practicable number of rural users of such service." 7 U.S.C. § 921.

The Budget Act Requires the Commission to Provide
Realistic Opportunities for Rural Telephone Companies
and Other Designated Entities to Become Licensees
through Competitive Bidding

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COMMUNICATIONS COMMISSION
THE SECRETARY

Under the Budget Act, the Commission's implementation of spectrum auctions must promote specific identified objectives set forth in Section 309(j)(3). These include goals related both to promoting service to rural consumers and to providing rural telephone companies with economic opportunities to secure licenses for new radio technologies through competitive bidding. For example, the Commission must (a) promote timely development and deployment of technologies, products and services "for the benefit of the public, including those residing in rural areas" and (b) avoid "excessive concentration" and award licenses to "a wide variety of applicants," including "rural telephone companies," as well as small businesses and businesses owned by members of minority groups and women.

Congress gave further substance to these objectives by announcing standards for the Commission's prescription of competitive bidding regulations. In Section 309(j)(4), Congress directed the Commission, inter alia, to:

- (a) consider installment payments and other payment methods or schedules to promote the stated objectives (309(j)(4)(A));
- (b) allocate spectrum bandwidth and prescribe service areas so as to promote equitable geographic distribution of licenses and economic opportunity for "a variety of applicants," again expressly including small business-

es, rural telephone companies and minority- and female-owned businesses; and

- (c) "ensure" that the same designated categories of applicants (including rural telephone companies) "are given the opportunity to participate in the provision of spectrum based services," by considering "tax certificates, bidding preferences, and other procedures."

The Budget Act also imposes a general public interest duty on the Commission: In designing its bidding methodology, it must safeguard the public interest in spectrum use and promote the overarching purposes of the Communications Act.¹ Finally, to monitor the success of competitive bidding, Congress required the Commission to evaluate and report in 1997 about issues including "whether and to what extent... competitive bidding methodologies have secured prompt delivery of service to rural areas and have adequately addressed the needs of rural users..." and whether rural telephone companies and the other designated groups "were able to participate successfully in the competitive bidding process."

The Commission has sought a further record to support preferences for women and minority group members. However, the Commission correctly acknowledged (NPRM at 23) that preferences for rural telephone companies and small businesses need not meet the special constitutional standards applicable to minority and

¹ See Section 309(j)(3), referring to Section 1 of the Communications Act.

gender preferences. Preferences for rural companies will assist them in competitive bidding that could otherwise be dominated by huge, cash-rich entities. Even more important, special consideration will help put licenses for services such as PCS in the hands of companies that are likely to serve rural consumers better and sooner.

"Rural Telephone Companies" Are LECs
that Serve Rural Study Areas

NRTA strongly urges the Commission to adopt a definition of "rural telephone company" that will both (a) provide the economic opportunity to participate required by Section 309(j)(3)(B) and (b) stimulate applications from companies that have already shown their commitment to the statutory objective of encouraging rapid deployment of new technologies and services for the benefit of the rural public, thus furthering the objective expressed in Section 309(j)(3)(A).² Increasing the chance for successful bids by LECs that, in effect, specialize in service to rural America will increase the likelihood that rural consumers will share in the benefits of PCS deployment.

Rural telephone companies have long demonstrated their dedication to providing first-rate service to their areas, in spite of the typically low population density and traffic volumes in rural areas, which in turn raise the unit cost of service. National Exchange Carrier Association (NECA) tariff members, for

² NRTA does not have a position on how applicants would qualify to participate as small businesses or businesses owned by minority group members or women.

example, provided digital switching in 1990 in 70 percent of their central offices.³ Their record for developing the infrastructure in rural areas had already far surpassed the RBOCs' 59 percent digital switching record for their combined urban and rural areas.⁴ By 1991, NECA tariff members had increased their digital switching to 88 percent.⁵

REA and RTB borrowers are prominent among these companies that have provided rural residents and businesses with up-to-date telecommunications systems. Their service record demonstrates that rural telephone companies are particularly well-qualified to make PCS technology widely available.

For this reason, NRTA believes that LECs that are REA and RTB borrowers should fall within the "rural telephone company" definition. However, the Commission asks (§ 77) whether "favorable financing" from the REA should have a bearing on eligibility for the rural telephone company preference. If the reference indicates that the Commission thinks REA financed rural telephone companies have less need of a preference, the assumption is incorrect. The Rural Electrification Restructuring Act of 1993 (P.L. 103-129), signed by the President on November 1, 1993, has removed almost all of the subsidy from the REA programs. The legislation effectively reduced the total annual subsidy from \$43

³ NECA, Modernizing Rural America -- Investments in new technologies by small telephone companies, p. 16 (1992).

⁴ Ibid.

⁵ Ibid.

million to \$16 million to provide a five year savings to the government of approximately \$123 million. From now on, 77 percent of the program loans will be made at or near the current long term cost of money to the government. More favorable terms will only be available to the systems and geographical areas most in need of additional assistance.

Even if they could easily obtain financing, REA borrowers would still be at a disadvantage in bidding for licenses to serve the large geographic areas -- MTAs and BTAs -- chosen by the Commission for PCS. Bidders for PCS licenses will include some of the largest corporations in the world. The resources of LECs serving rural study areas will be tiny in comparison.

To encourage LECs that are rural service specialists because of their focus and experience to bring their rural expertise into the application and bidding arena, NRTA urges the Commission to adopt the following definition, based on the Senate's rural program definitions:

A rural telephone company is a local exchange carrier that

- (a) provides local exchange service to a local exchange study area that does not include either --
 - (1) any incorporated place of 10,000 or more, or any part thereof; or
 - (2) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;⁶ or
- (b) provides telephone exchange service by wire to less than 10,000 access lines.

⁶ August 10, 1993 is the date the Budget Act became law.

The proposed dual eligibility benchmark of less than 10,000 in population for rural communities or less than 10,000 access lines per carrier is more reasonably tailored to identify local exchange carriers that serve rural areas than the narrowly restricted 2,500 population benchmark in the Commission's rule governing the rural exemption from the cable cross-ownership ban for telephone companies. The extensive record compiled on the pending proposal to increase the standard in Section 63.58 of the Rules for telephone company ownership of cable systems in their service territory demonstrates that entrants other than telephone companies tend to provide incomplete service, at best, to areas up to the 10,000 population benchmark, or even higher. Local exchange carriers that serve such areas, however, have experience in meeting the challenge of making service widely available despite higher costs, smaller subscriber bases and lower traffic volumes. Rural customers deserve the chance to have PCS provided by rural telephone company licensees. Moreover, telephone companies with less than 10,000 access lines obviously lack the resources of massive bidders such as the Bell operating companies.

NRTA's proposed definition would exclude local exchange carriers that serve rural territory in conjunction with urban and metropolitan area operations. Such LECs are not primarily rural telephone companies and tend to concentrate their efforts on their metropolitan markets. Indeed, as recent sales of rural territory by U.S. West have illustrated, rural areas served by

operating companies serving hybrid urban and rural territories may lack the technology provided for rural communities by LECs that concentrate their efforts on rural America.

NRTA Supports the Commission's Proposal to Limit Bidding for Two Frequency Bands to Designated Entities

NRTA endorses the Commission's proposal to accept bids for one 20 MHz band and one 10 MHz band solely from members of the groups designated in the statute for special consideration. Local exchange carriers that fall within NRTA's recommended definition and provide local exchange service by wire to customers within a given PCS service area should be eligible to apply and bid for licensing in the designated-entity frequency bands for that area.

The only way that small entities can have a real opportunity to bid individually for frequencies in a service such as PCS is if they need not bid against the extremely "deep pocket" applicants that will be active in the bidding for unrestricted frequency bands. While an auction for several preferred categories of bidders seeking authority for BTA-size service areas does not provide rural LECs with the set aside which the Rural Telephone Coalition had hoped Congress would adopt, at least the other groups have also been designated because of a fear that their participation in open bidding would be unlikely to succeed against applicants with deeper pockets.

**The Commission Should Adopt a Delayed Payment
and Installment Schedule for Designated
Entities in Any PCS Frequency Auction**

NRTA also urges the Commission to delay payments and collect the amount bid by a successful designated entity in installments, rather than by an immediate lump sum payment. Allowing a delay of two years between the required "deposit" and the first installment would enhance the opportunity for small businesses, rural telephone companies, minorities and women to participate as bidders. The Commission should also reduce the requirement for an extensive showing of financial qualifications at the time applications are filed by designated entities. A reduced showing would recognize the different payment schedule and, in the case of rural telephone companies, their history of making substantial investments to serve their rural communities. Applying reasonable payment schedules and application requirements may even enable some designated entities to participate in the bidding for the most desirable MTA service areas and 30 MHz frequency bands the Commission will award. Following the two year delay to allow for start-up activities, when no profits are likely, the remainder of the designated entity's successful bid amount should be spread over the remaining eight years of the initial PCS license term.

It is reasonable to provide for installment payments for successful designated group bidders for all spectrum and PCS service areas to meet the congressional standard for providing a reasonable opportunity for successful participation. If desig-

nated entities cannot pay over a longer period in the 30 MHz and MTA (or larger) auctions, they will essentially be excluded from those opportunities unless they are part of a large joint venture of some kind. Excluding the designated groups from individual bidding for the premium spectrum bandwidth and geographical markets would, as Commissioner Barrett has pointed out, relegate them to "preference" only for what many argue are less desirable and competitively disadvantaged licenses. Thus, while the designated entity spectrum blocks will provide the best opportunity for the preferred groups to bid successfully, they should be able to use delayed payment and installment payment schedules for any PCS frequencies assigned by competitive bidding.

NRTA also questions whether Congress intended that an installment plan payment schedule for designated entities should be treated as an interest bearing loan from the government.⁷ Neither the statute nor the legislative history comports with this notion. The statute speaks of "guaranteed installment payments," not loans. Even the rule to which the NPRM refers in proposing to charge interest at the prime rate plus one percent⁸ states that "interest may not start to accrue before the debt is actually owed" and waives interest for a debt paid within 30 days of the due date.⁹ Under an installment schedule, each install-

⁷ The Commission proposes in paragraph 79 to use installment payments with interest for designated entities.

⁸ NPRM, n. 57, citing 47 C.F.R. § 1.1940.

⁹ 47 C.F.R. § 1.1940(b) and (g).

ment becomes due at the time scheduled for payment, and interest should only be assessed for missed or overdue installment payments.

Charging interest to increase the amount of auction revenues would undermine the purpose of deferred payment schedules -- to help the designated entities to obtain financing and increase their bidding power. Section 309(j)(7)(B) directs the Commission not to look solely at auction revenue expectations in determining the public interest. Even if the Commission charges interest, NRTA suggests that it should charge only the government's cost of money.

The Commission Should Make Tax Certificates
Available for Transactions Increasing Ownership
by Designated Entities

NRTA also supports the use of tax certificates to facilitate investment in ventures by designated groups and sales of licensed operations to designated entities. Tax certificates should be available when a member of a designated group buys out an investor, so the investor can invest in other telecommunications property without tax consequences. Tax certificates should also be available for sales to designated group members.

These policies would assist designated entities in obtaining financing to carry them through the unprofitable start-up years. This approach would also make it easier for designated entities to acquire operations that have already been started.

Competitive Bidding Should Not Be Applied
to LEC Microwave Links, BETRS and
Rural Radio Frequencies

NRTA is concerned with the Commission's proposal to subject microwave links to competitive bidding, including those used by carriers charged with providing universal service via the public switched network. NRTA also believes that Basic Exchange Telephone Radio Systems (BETRS) and other rural radio frequencies should not be awarded by competitive bidding.

Many LECs -- particularly those in rural areas -- need microwave frequencies to carry their telecommunications traffic between central offices or from such offices to tandems or interexchange carrier points of presence. Consequently, microwave transmission facilities form a vital link in the nation's public switched network and in the universal availability of reasonably priced services.

BETRS frequencies have similar importance to the public interest. They are used to provide local subscriber loops when other technology is less cost effective -- generally in rural and remote areas. These frequencies, too, play an indispensable role in assuring the ubiquitous availability of telephone service.

Both LEC microwave links and BETRS loops enable LECs to fulfill the public policy of Section 1 of the Communications Act. That Congressional mandate seeks

to make available, so far as possible, to all the people of the United States a rapid, efficient nation-wide and world-wide wire and radio communication service with adequate facilities at reasonable charges ...

Section (330)(j)(1) of the Budget Act authorizes competitive bidding when "mutually exclusive licenses are accepted for filing," if using competitive bidding "will promote the objectives described in paragraph (3)." As discussed above, the objectives section expressly directs the Commission to

include safeguards to protect the public interest in the use of the spectrum and ... seek to promote the purposes specified in section 1 of this Act

NRTA is uncertain whether the Commission means to encourage competitive bidding for microwave, BETRS and rural radio licenses. At present, applicants conduct frequency investigations to find spectrum that will not be mutually exclusive with other users or applicants. NRTA believes that the Commission should not seek to stimulate competing applications for frequencies such as LEC microwave links, BETRS and rural radio. Section (j)(6) of the Budget Act expressly disclaims constructions that would change spectrum allocation criteria and procedures or interfere with measures used to avoid mutual exclusivity. Moreover, "use of the spectrum" as part of a universal service network, which has both direct and external benefits that may not be taken into account by competitive bidding, is exactly the kind of use for which the Commission must "include safeguards to promote the purposes specified in Section 1 of this Act" under the directive of paragraph 309(j)(3).

Therefore, the Commission should exempt LEC microwave, BETRS and rural radio frequencies from competitive bidding, so long as

they will be used as part of the public switched network that provides universal service.

Conclusion

Congress has expressed its clear and lawful intent that rural telephone companies and the rural public receive special consideration in implementation of competitive bidding for radio spectrum. The Commission should go forward with its plans to allocate frequency bands for dedicated entity licenses and should establish delayed payment and installment schedules, as well as tax certificate policies, to foster ownership of licensed facilities by designated entities, through successful bidding or purchase. The definition of rural telephone company should be broad enough to encompass carriers that, in effect, specialize in rural telephony.

To protect the rural public's interest in efficient and affordable service, the Commission should not use competitive bidding for intermediate microwave links, BETRS and rural radio spectrum used in the public switched network by carriers with universal service obligations.

Respectfully submitted,

NATIONAL RURAL TELECOM ASSOCIATION

By: 
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